IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 215 of 2006.

Judgement reserved on:

Date of decision : May 19, 2006.

Lekh Raj & & anr. …….. Appellants.

Versus

Chiman Lal ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellants: Mr. Keshav S.Thakur, Advocate.

For the respondents:

Surjit Singh J. (Oral).

Heard and gone through the record. Respondent Chiman Lal, hereinafter called plaintiff, filed a suit for possession of a house against the defendants, one of whom is his brother and the other one is wife of the said brother, alleging that land measuring 1 Kanal 2 Marlas, bearing khasra No. 1544/1, was joint abadi of the parties and that there had been a family settlement. . A house marked by letters A, B, C, D standing on a portion of the aforesaid khasra No. 1544/1, fell to his share and thus he became its exclusive owner. He further alleged that he being in Army, handed over the house to

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Whether reporters of local Papers may be allowed to see the judgment?

one of his brothers and that after that brother of his vacated the house, the appellants-defendants, approached him for using the house as licensees and assured that the same would be vacated, on demand. He alleged that he being unmarried at that time and also being in the Army gave the possession of the house to the defendants- appellants, but later on when he got married in the year 1992 and required the house, the defendants refused to vacate it.

Suit was contested by the appellants- defendants. Various preliminary objections were raised. On merit, it was alleged that the respondent- plaintiff himself had approached the defendants on 3.1.1986 for the sale of the house which was, at that time, lying incomplete and that the defendants then paid Rs. 6,000/- to the plaintiff by way of sale consideration and purchased the house and thereafter completed it by spending a sum of Rs. 8,000/- to Rs. 9,000/-.

Trial court returned the finding that the plaintiff was the owner of the suit house and that the plea set up by the defendants was unfounded. Consequently, the suit was decreed. Appeal was preferred against the judgement and decree of the trial court. The learned District Judge, has affirmed the aforesaid finding of the trial court as also the decree.

The main contention that has been raised by the learned counsel for the appellants is that respondent- plaintiff was only a co-sharer in the property and that the alleged writing pertaining family settlement being not registered, the plaintiff could not have claimed exclusive title to the suit house in view of the law laid down

by the Hon'ble Supreme Court in **Roshan Singh and others** vs. **Zile Singh and others,** [AIR 1988 SC 881]. According to him, when the alleged foundation of the settlement itself was defective, because the document of such settlement was unregistered, neither the respondent- plaintiff could have claimed that he was exclusive owner of the suit house nor could the trial court and the first appellate court have held him to be the exclusive owner. Various questions based on this plea have been formulated and submitted alongwith the memorandum of appeal.

The contention of the learned counsel is misconceived. A reading of the judgements of the two courts below, shows that no plea was raised by the appellants- defendants that they were co-sharers or joint owners of the house property. As a matter of fact, they did not deny the claim of the plaintiff that he was the exclusive owner of the suit property. Not only this, they rather admitted the claim of the plaintiff that he was the exclusive owner of the suit property, at one point of time, when they stated that they had purchased this property from him for a consideration of Rs. 6,000/-.

Another contention raised by the learned counsel is that the first appellate court itself compared the signatures of the plaintiff on the document Ex. DW 1/C, whereby the appellants claimed to have purchased the suit property with the admitted signatures of the plaintiff and gave finding that the two signatures did not tally. His contention is that the trial court ought to have sought the opinion of some hand-writing expert. Admittedly, no prayer was made by the appellant- defendants to the trial court or to the first appellate court for the comparison of the purported signatures of the plaintiff on Ex.

DW 1/C, with his admitted signatures and, therefore, the appellants- defendants are estopped to raise such a question at this stage.

As a result of the above stated position, I do not think that any question of law, leave alone a substantial question of law, arises. Therefore, the appeal is dismissed.

CMP No. 327 of 2006.

Infructuous.

May 19, 2006. **(Surjit Singh),**
(Hem) **Judge.**